IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	10/771,076	Confirmation No.:	1945
Appellant:	Joseph Asher, et al.		
Title:	MANAGING BETS THAT SELECT EVENTS AND PARTICIPANTS		
Filed:	February 3, 2004		
Art Unit:	3714		
Examiner:	Frank Leiva		
Atty. Docket:	04-7103		
Customer No.	63710		

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appellant hereby appeals from the Action of September 3, 2008.

TABLE OF CONTENTS

REMARKS/ARGUMENTS

Appellant appeals from the Office Action of September 3, 2008.

I. Real Party in Interest

The real party in interest is Cantor Index, LLC. Cantor Index is an affiliate sharing significant overlap in ownership, management, and directors, with a public company, BGC Partners, Inc. However, there is no direct ownership or financial consolidation in either direction between Cantor Index and BGC Partners.

II. Related Appeals and Interferences

Appellant is unaware of any related appeals or interferences.

III. Status of Claims

Claims 1, 2, 4-23, 26-28, 31-33, 35-47 and 49-79 are involved in the appeal. Claims 1, 23, 56 and 59 are independent. Claims 3, 24, 25, 29, 30, 34, and 48 are cancelled.

Because the Office Action never considers the actual claim language, and only vaguely alludes to inaccurate and imprecise paraphrases of claims, it is not clear that any *claim* has actually been examined, let alone *rejected.* The only thing that is clear is that no claims are allowed.

Further, under the principles of administrative law discussed in § VII.B below, due to two procedural lapses discussed in §§ VII.B and VII.C.4, no agency action was ever issued, and therefore no claims were ever rejected.[1]

To the degree any claim is rejected, that rejection is appealed.

A complete copy of the claims is attached hereto as an Appendix.

---

[1] The Board's precedent holds that the Board has "twice rejected" jurisdiction "so long as the applicant has twice been denied a patent," even if no specific *claim* is twice rejected. *Ex parte Lemoine*, 46 USPQ2d 1420, 1423 (BPAI 1994). Past experience has made *very* clear that Technology Center Directors and the Office of Petitions *adamantly* refuse to entertain petitions requesting supervisory authority and oversight over examination that exceeds the rules and the scope of authority delegated to examiners. Therefore it would be futile to petition the Examiner's failure to examine.

IV. Status of Amendments

A paper reiterating a request for entry of an amendment to the title is filed herewith. No amendment touching on the claims has been submitted since the Action of September 2008.

V. Summary of the Subject Matter

As a general proposition, the various inventions of the independent claims involve bets where the bettors bet on *different events* (for example, various bettors may bet on different races in an afternoon of racing), and the bets are pooled in a *common pool*.[2]

Claims 1, 23, 56 and 59 read as follows:

> 1. A method, comprising the steps of:
>
> at a computer processor, receiving a plurality of bets, each bet comprising:
>
> a selection of a first number of events selected from a group of events;
>
> a selection of a respective participant for each of the first number of events selected; and
>
> a bet amount;
>
> wherein at least one selected event of a first bet of the plurality of bets comprises a **different event** from the events selected to form a second bet of the plurality of bets;
>
> **combining the amounts of the bets of the plurality to form a betting pool**; and
>
> at a computer processor, determining an amount of a payout for winning bets of the plurality based at least in part on the amount of the bets in the betting pool.

> 23. A system for managing bets, comprising:
>
> a tangible computer storage memory and processor designed to store and operate on a plurality of bets, each bet comprising:
>
> a selection of a first number of events selected from a group of events;
>
> a selection of a respective participant for each of the first number of events selected; and
>
> a bet amount;
>
> wherein at least one selected event of a first bet of the plurality of bets comprises **a different event** from the selected events of a second bet of the plurality of bets;
>
> the processor operable to:
>
> **combine bets, including at least the first and second bets to form a betting pool**; and

---

[2] This discussion, like all of § V, is a mere discussion of one concrete preferred embodiment, as a helpful aid to establish context for the discussion of the claims that follows. It is not a discussion of the claims themselves.

determine an amount of a total payout based at least in part on the betting pool.

56. A method, comprising the steps of:

at a computer processor, receiving a first bet comprising:

a first selected number of events, the first selected number of events comprising at least a first event;

a selection of a respective participant for each of the first selected number of events; and

a first bet amount;

at the computer processor, receiving a second bet comprising:

a second selected number of events, the second selected number of events comprising at least **a second event different from the events in the first selected number of events**;

a selection of a respective participant for each of the second selected number of events; and

a second bet amount; and

at the computer processor, determining an amount of a total payout based at least in part on an amount of **a betting pool** formed by combining the first bet amount and the second bet amount.

59. A method, comprising the steps of:

at a computer entry device, accepting from a user a bet that selects an event and outcome of the event on which to bet; and

forwarding the bet for assembly of a plurality of bets from a plurality of users into **a betting pool**, each bet in the plurality including a designation of an event and an amount, the plurality of bets in the betting pool including bets on **a plurality of distinct events that differ among the bets in the pool**, the betting pool to be processed by a processor to determine a payout for winning bets of the plurality based the outcomes of at least two events designated by bets in the betting pool.

In these claims, a bettor selects a number of events from a group of events. (7:13-23, 8:9-21.[3]) For example, the bettor may choose the third, fourth and sixth races at a given horse race track on a given afternoon. The bettor selects a participant for each of the chosen events. (8:19 to 9:10; Figs. 2A and 2B.) For example, the bettor may choose winning horses for each of these three races, or a horse to win race 3, a horse to place in race 4, and a horse to show in race 6. At least one event chosen by one better is different than the events chose by a second bettor. (9:11-27; Figs. 2A and 2B.) The bets of the first and second bettor are combined to form a betting

[3] This notation refers to the specification by "page:line" or "page:start_line - end_line".

pool. (9:28-31.) These two limitations of claim 1, taken together, require that various bettors in a *common pool* bet on *different events or sets of events* .[4] A computer determines payouts for those bets that are determined to be winning bets. (Fig. 1, refs 38, 40; Fig. 5, refs 212, 214).

This contrasts with known betting systems in one of two ways:

- Any single pool collects bets fail to meet the "different events" limitation by covering only a single event or the same set of events, *e.g.*:
  - bets on different horses from the *same race* or *same set of races*, even if the bets are on different horses or combinations of horses
  - balls drawn from a lottery in a *single* drawing, even if multiple prizes are paid on different combinations of balls drawn in that single drawing
  - etc.
- "Multi-pool" betting in which bets on different events (or sets of events with at least some non-overlap) go into different pools.

No limitation of any claim involved in the appeal are in § 112 ¶ 6 form.

VI. Issues to Be Reviewed on Appeal

1. Whether the claims are rejected at all. The claims discussed in the Action of September 2008 are the claims as they stood before the amendment of April 2008.

2. Whether the claims were examined under 37 C.F.R. § 1.104(c)(2) and MPEP § 2141 *et seq.*, and thus whether any rejections are currently pending for review on the merits.

3. If any rejection of any one of claims 1, 2, 4-17, 22, 23, 26-28, 31-33, 35-39, 44-47, 49, 52, 53, 56, 59-77, and 79 under § 103(a) is pending, whether that rejection may be affirmed, when the Action neglects to make showings of correspondence between claim elements and the art, and neglects to make required showings on elements of *prima facie* obviousness.

VII. Argument

A. Standard of Review

In deciding *ex parte* appeals, the Board is required to adjudicate the issues *de novo*, independently, without deference to the examiner. It is not an appellant's burden to establish

[4] While there may be pairs of bettors who happen to bet on identical sets of events, as long as some bettors bet on different sets of events, claim 1 is satisfied.

"error" by the examiner, or persuade the Board. The examiner and the Board each have independent duties under both the APA and the Patent Act to present *prima facie* cases of unpatentability, to set forth findings on all essential issues, to support them all with "substantial evidence."[5]

1. Issues of Law, Including Claim Construction and Obviousness, are Reviewed *De Novo*

The Board reviews issues of law *de novo*, including the legal conclusion of obviousness, with no deference, on the Board's independent judgment.[6]

Claim construction is an issue of law that the Board reviews *de novo*, with no deference to the examiner.[7] During *ex parte* appeals, claims are given their "broadest reasonable interpretation ***consistent with the specification***."[8]

The Board may not rely on or cite non-precedential or "informative" opinions against any party other than the PTO itself.[9] Conversely, the Board's non-precedential decisions are not binding so as to require *en banc* review to be overruled, they are sufficient agency "action" under

---

[5] *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) ("there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. This requirement is as much rooted in the Administrative Procedure Act, which ensures due process and non-arbitrary decisionmaking, as it is in § 103 [of the Patent Act"), *quoted with approval KSR Int'l Inc. v. Teleflex Inc.*, 550 U.S. 398, 418, 82 USPQ2d 1385, 1396 (2007).

[6] *See In re Translogic Technology, Inc.*, 504 F.3d 1249, 1256, 84 USPQ2d 1929, 1934 (Fed. Cir. 2007) (the Federal Circuit reviews the Board's legal determinations *de novo*, including determinations of obviousness); *In re Sullivan*, 498 F.3d 1345, 1350, 84 USPQ2d 1034, 1038 (Fed. Cir. 2007) (same). Because the Board is independently accountable for correctness of its decisions, it should review examiners' decisions *de novo* as well

[7] *Ex parte Toda*, Appeal No. 98-0078, http://des.uspto.gov/Foia/ReterivePdf?system=BPAI&flNm=fd980078 at 6, 2001 WL 1729659 at *3 (BPAI Apr. 26, 2001) (non-precedential), *citing Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1456, 46 USPQ2d 1169, 1174 (Fed. Cir. 1998) (*en banc*); *see also Translogic*, 504 F.3d at 1256, 84 USPQ2d at 1934 (Federal Circuit reviews Board's claim construction *de novo*, without deference); *Gechter v. Davidson*, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997) (same). Because the Federal Circuit reviews claim construction *de novo*, the Board is independently accountable.

[8] *In re Translogic Technology, Inc.*, 504 F.3d 1249, 1256, 84 USPQ2d 1929, 1934 (Fed. Cir. 2007); *In re Morris*, 127 F.3d 1048, 1054–55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

[9] 5 U.S.C. § 552(a)(2) ("A final order, opinion, … may be relied on, used, or cited as precedent by an agency against a party other than an agency only if . . . it has been indexed and either made available or published as provided by ['written rules' of] this paragraph")

5 U.S.C. § 551 such that this panel of the Board must give a "cogent explanation" if it chooses to disagree with "prior norms."[10]

2. Contested Issues of Fact are Re-Determined *De Novo* on a "Preponderance of Evidence" Standard

On contested issues of fact, the burden of proof is on the Patent Office, to produce the factual basis for its rejection of an application.[11] Any reasonable rebuttal, whether supported by new evidence or by argument only, is procedurally sufficient to put disputed issues before the Board for *de novo* review.[12] The Board must independently reweigh all evidence and arguments relating to all contested facts against each other, to reapply a "preponderance of the evidence" standard. The Board may not give deference to a prior conclusion.[13] That is, if the evidence is in

---

[10] *Atchison, Topeka and Santa Fe Ry. v. Wichita Board of Trade*, 412 U.S. 800, 806–08 (1973) ("Whatever the ground for the departure from prior norms, ..., it must be clearly set forth so that the reviewing court may understand the basis for the agency's action and so may judge the consistency of that action with the agency's mandate").

[11] *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ2d 785, 788 (Fed. Cir. 1984) ("[in] *ex parte* procedure, [*Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 148 USPQ 459 (1966)] is interpreted as continuing to place the 'burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103'").

[12] *In re Alton*, 76 F.3d 1168, 1175, 37 USPQ2d 1578, 1583-84 (Fed.Cir.1996) ("[t]o overcome a *prima facie* case, an applicant must show. . . After evidence *or argument* is submitted by the applicant . . ., patentability is determined on the totality of the record, by a *preponderance of the evidence* with due consideration to persuasiveness of argument," citation and quotation omitted, emphasis added); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986) ("if the applicant comes forward with reasonable rebuttal, whether buttressed by experiment, prior art references, or argument, the entire merits of the matter are to be reweighed."); *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential, expanded panel including Director Kappos, Deputy Directory Barner, and Chief APJ Fleming) ("The Examiner has the initial burden to set forth the basis for any rejection so as to put the patent applicant on notice ... [T]he Board reviews the particular finding(s) contested by an appellant anew in light of all the evidence and argument on that issue," using a "preponderance of evidence" standard); *Ex parte Feder*, Appeal No. 94-0995, http://des.uspto.gov/Foia/ReterivePdf?system=BPAI&flNm=fd940995 at 12, 1999 WL 33205784 at *5 (BPAI Apr. 9, 1999) (unpublished) (based on *Hedges*, holding that failure of examiner to respond to argument "itself constitutes reversible error").

[13] *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) ("After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument."); *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976) (if an applicant supplies an affidavit in reply to a *prima facie* showing of obviousness,

> [T]he decision-maker must start over. ... the question of whether [the *prima facie*] burden has been successfully carried requires that the entire path to decision be retraced. An earlier decision should not, as it was here, be considered as set in concrete, and applicant's rebuttal evidence then be evaluated only on its knockdown ability. Analytical

equipoise, the appellant wins. The evidence is to speak for itself—the examiner's argument interpreting evidence is entitled to no more weight than attorney argument.[14]

As an agency fact-finder (not an Article III court) governed by the Administrative Procedure Act, the Board may only rely on "substantial evidence."[15] "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[16] The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.[17] The PTO may not rely on "irresponsible admission and weighing of hearsay, opinion, and emotional speculation in place of factual evidence" or "suspicion, surmise, implications, or plainly incredible evidence."[18] Examiner argument is not substantial evidence."[19] Neither the examiner nor the Board may substitute its own "expertise" for substantial evidence.[20] Only if this evidentiary burden is met for all *prima*

> fixation on an earlier decision can tend to provide that decision with an undeservedly broadened umbrella effect. *Prima facie* obviousness is a legal conclusion, not a fact. Facts established by rebuttal evidence must be evaluated along with the facts on which the earlier conclusion was reached, not against the conclusion itself. Though the tribunal must begin anew, a final finding of obviousness may of course be reached, but such finding will rest upon evaluation of all facts in evidence, uninfluenced by any earlier conclusion reached by an earlier board upon a different record.

[14] Note that the Federal Circuit reviews the Board more deferentially than the Board reviews examiners. *In re Translogic Technology, Inc.*, 504 F.3d 1249, 1256, 84 USPQ2d 1929, 1934 (Fed. Cir. 2007) (Federal Circuit reviews Board's determinations of fact for "substantial evidence.").

[15] *Universal Camera Corp. v. Nat'l Labor Relations Bd.*, 340 U.S. 474, 487–88 (1951) (APA requires "substantial evidence," including taking "account whatever in the record fairly detracts from its weight"); *In re Gartside*, 203 F.3d 1305, 1312, 53 USPQ2d 1769, 1773 (Fed. Cir. 2000).

[16] *Universal Camera*, 340 U.S. at 477; *Gartside*, 203 F.3d at 1312, 53 USPQ2d at 1773.

[17] *Universal Camera*, 340 U.S. at 488; *Gartside*, 203 F.3d at 1312, 53 USPQ2d at 1773.

[18] *Universal Camera*, 340 U.S. at 478, 484, 488.

[19] *Ex parte Gover*, Appeal No. 1999-0288, http://des.uspto.gov/Foia/ReterivePdf?system=BPAI&flNm=fd990288 at 17–18, 2003 WL 25287598 at *7 (BPAI Mar. 31, 2003) (unpublished) ("The extensive arguments of the examiner, even if we agreed with him from our own experience and background knowledge of the art, are not a substitute for evidence on the record. … Stated differently, the subjective opinion of the examiner as to what is or is not obvious, without evidence in support thereof, does not provide a factual basis upon which the legal conclusion of obviousness can be reached.")

[20] *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (The Board's "expertise may provide sufficient support for conclusions as to peripheral issues. With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience — or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings," to satisfy the substantial evidence test); *see also Brand v. Miller*, 487 F.3d 862, 868–69,

facie elements does the burden of coming forward with rebuttal argument or evidence shift to the appellant. The Board must review the factual sufficiency of the examiner's decision (either based solely on the *prima facie* case or on the evidence in the record as a whole, if the appellant has offered rebuttal evidence or argument) on a preponderance of evidence.[21]

B. First Error: Because of Procedural Breaches by the Examiner, No Examination Under the Law Has Occurred

At page 2, the Office Action states "it is understood [apparently by the Examiner] that it is the applicant's responsibility to read the references cited." The Examiner's "understanding" is wrong. Stating a *prima facie* case of unpatentability is always the Examiner's responsibility.[22] 37 C.F.R. § 1.111(b) clearly states that an applicant's only responsibility is to address "errors ***in the examiner's action***," not to all theoretical issues that could be raised.[23] The burdens of going forward, of production of evidence, and of persuasion lie with the examiner, and the Board cannot affirm positions that the examiner has not articulated.[24] Procedurally, to reach an

---

82 USPQ2d 1705, 1709 (Fed. Cir. 2007). The holding of *Brand v. Miller* is limited to *inter partes* proceedings, and expressly declines to decide the issue for *ex parte* proceedings. However, the administrative law principles underlying *Brand* would seem to leave no room to distinguish *ex parte* appeals.

[21] *In re Swanson*, 540 F.3d 1368, 1377, 88 USPQ2d 1196, 1203 (Fed. Cir. 2008) ("In PTO examinations … the standard of proof [is] a preponderance of evidence"); *In re Kahn*, 441 F.3d 977, 989, 78 USPQ2d 1329, 1338 (Fed. Cir. 2006) ("the Board need only establish motivation to combine by a preponderance of the evidence"); *In re Glaug*, 283 F.3d 1335, 1338, 62 USPQ2d 1151, 1153 (Fed. Cir. 2002) ("patentability is determined by a preponderance of all the evidence"); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) ("After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.").

[22] *In re Spada*, 911 F.2d 705, 707 n.3, 15 USPQ2d 1655, 1657 n.3 (Fed. Cir. 1990) (to raise a *prima facie* case, the PTO must come forward with evidence and an explanation of that evidence that "not only … would reasonably allow the conclusion the examiner seeks, but also that the prior art compels such a conclusion if the applicant produces no evidence or argument to rebut it.").

[23] *E.g.*, *In re Glaug*, 283 F.3d 1335, 1338, 62 USPQ2d 1151, 1152 (Fed. Cir. 2003) ("During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. If the PTO fails to meet this burden, then the applicant is entitled to the patent."); MPEP § 2142 (for obviousness, at least one of the seven patterns of three *prima facie* showings must be made by the examiner before any burden shifts to an applicant).

[24] *Ex parte Berg*, Appeal No. 2002-0456, http://des.uspto.gov/Foia/ReterivePdf?system=BPAI&flNm=fd020456 at 4, 2002 WL 32346092 at *2 (BPAI Feb. 6, 2003) (non-precedential) ("the examiner must present a full and reasoned explanation of the rejection in the statement of the rejection, specifically identifying underlying facts and any supporting evidence, in order for appellants to have a meaningful opportunity to respond").

appealable rejection, the examiner is "required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for [ ] review. In particular, we expect that the [ ] anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings,"[25] and to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[26]

As a matter of administrative law, when an agency fails to make the showings required in the agency's own procedural handbook, the agency action is void, "illegal and of no effect"—that is, it has no legal existence,[27] and thus in such situations there is no "decision" of the examiner to affirm. Where many elements of agency practice receive deference on judicial review, review of an agency's compliance with its own procedures is "strict."[28]

The Examiner confessed procedural error. Because of the deviation from procedure, the Board's standard of review must be further adjusted.[29] The Board's decision will not receive

---

[25] *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997).

[26] *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962))

[27] *Service v. Dulles*, 354 U.S. 363, 388–89 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959); *Vitarelli*, 359 U.S. at 546–47 (Frankfurter, J., concurring) ("procedure must be scrupulously observed."); *IMS, P.C. v. Alvarez*, 129 F.3d 618, 621 (D.C. Cir. 1997) (it is a "well-settled rule that an agency's failure to follow its own regulations is fatal to the deviant action"); *Certain Former CSA Employees v. Dept. of Health and Human Services*, 762 F.2d 978, 984 (Fed. Cir. 1985) (action in violation of agency's own regulation is "illegal and of no effect," emphasis added).

[28] *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959); *Vitarelli*, 359 U.S. at 546–47 (Frankfurter, J., concurring) ("procedure must be scrupulously observed."); *Powell v. Heckler*, 789 F.2d 176, 178 (3rd Cir. 1986) ("No such tolerance, however, is required in matters pertaining strictly to an agency's observance and implementation of its self-prescribed procedures. The courts, to protect due process, must be particularly vigilant and must hold agencies . . . to a strict adherence to both the letter and the spirit of their own rules and regulations. "); *Reuters v. F.C.C.*, 781 F.2d 946, 950-51 (D.C. Cir. 1986) ("*Ad hoc* departures from [an agency's] rules, even to achieve laudable aims, cannot be sanctioned").

[29] *See Chamber of Commerce v. Securities & Exchange Comm'n*, 443 F.3d 890, 901–02 (D.C. Cir. 2006) (informal agency action is usually reviewed deferentially, but "more exacting review may be required when the presumption of regularity is rebutted"); *Stone v. Federal Deposit Insurance Corp.*, 179 F.3d 1368, 1376 (Fed. Cir. 1999) ("Our system is premised on the procedural fairness at each stage of [agency] proceedings. [A party before an agency] is entitled to a certain amount of due process rights at each stage and, when those rights are undermined, the [party] is entitled to relief.")

deference on review by the Federal Circuit or District Court for the District of Columbia if the Board fails to appropriately discount procedurally-flawed decisionmaking by the examiner.[30]

If the Board applies the wrong standard of deference to the examiner's decision or the wrong standard of proof, that fact alone renders the Board's entire decision invalid, and a reviewing court must vacate the Board's decision in its entirety on that basis alone.[31]

C. Claims 1, 23, 56 and 59

Claims 1 and 23 stand or fall together. The wording of claim 56 is slightly different, and claim 56 stands separately from 1 and 23. Claim 59 likewise stands or falls separately from the others. However, on the current state of the record, the errors in the Action relate to misstatements of the prior art and erroneous legal standards. At least on the record as it stands today, the issues discussed below are common to all four claims. At this juncture, Appellant merely notes the differences in claim language, and requests separate decisions in the event that the issues emerge that turn on the differences in claim language.[32]

---

[30] *Powell v. Heckler*, 789 F.2d 176, 178 (3d Cir. 1986) ("No such tolerance, however, is required in matters pertaining strictly to an agency's observance and implementation of its self-prescribed procedures. The courts, to protect due process, must be particularly vigilant and must hold agencies. . . to a strict adherence to both the letter and the spirit of their own rules and regulations."); *Natural Resources Defense Council v. S.E.C.*, 606 F.2d 1031, 1048 (D.C. Cir. 1979) ("Our review of an agency's procedural compliance with statutory norms is an exacting one").

[31] *See, e.g., Cooper Industries Inc v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 443, 58 USPQ2d 1641, 1649 (2001) (vacating a decision of the Ninth Circuit based solely on the Ninth Circuit's application of an incorrect standard of review); *Dickinson v. Zurko*, 527 U.S. 150, 165, 50 USPQ2d 1930, 1936–37 (1999); *Price v. Symsek*, 988 F.2d 1187, 1194, 1196, 26 USPQ2d 1031, 1036, 1038 (Fed. Cir. 1993) (remanding because the Board used the wrong standard of proof).

[32] *Hyatt v. Dudas*, 551 F.3d 1307, 1312, 89 USPQ2d 1465, 1468 (Fed. Cir. 2008) ("a group of claims rejected on the same ground—is one in which the differences between the claims is 'of no patentable consequence to a contested rejection.'") and *In re McDaniel*, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002) (the Board must treat claims that use different language separately if requested by the appellant: "The applicant has the right to have each of the grounds of rejection relied on by the Examiner reviewed independently by the Board")

With this proviso, claim 1 is representative of claims 23, 56 and 59:

> 1. A method, comprising the steps of:
>
> at a computer processor, receiving a plurality of bets, each bet comprising:
>
> a selection of a first number of events selected from a group of events;
>
> a selection of a respective participant for each of the first number of events selected; and
>
> a bet amount;
>
> wherein ***at least one selected event of a first bet of the plurality of bets comprises a different event from the events selected to form a second bet of the plurality of bets***;
>
> combining the amounts of the bets of the plurality to form ***a betting pool***; and
>
> at a computer processor, determining an amount of a payout for winning bets of the plurality based at least in part on the amount of the bets in the betting pool.

1. Second Error: The Office Action Does Not Address *THE CLAIM LANGUAGE*

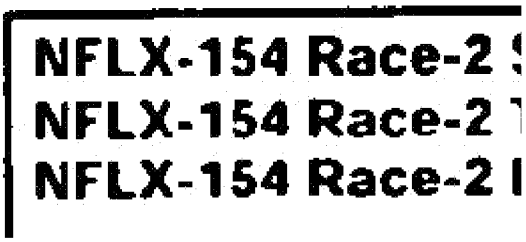
The Office Action is framed addressed to the claim language as it stood ***before the amendment of April 2008***. The Office Action does not examine, and does not reject, ***the claims as now pending***.

Claim 1 recites first and second bets that include at least one "different event" relative to each other. At page 2 of the Office Action, second paragraph, the Office Action notes only that (in the Examiner's unsupported opinion, see §§ VII.C.2 and VII.C.3, below), the reference shows bets that are "different." Even if true, this is irrelevant to the claim language, which requires bets that relate to "different ***events***." "Different ***bets***" on the ***same event*** (win, place, show, trifecta, etc. on a single race) are irrelevant to the claim language.

The Office Action does not consider the claim language. No claim is rejected.

2. Third Error: In Spite of Requests that the Examiner Identify "Different Events," The Office Action Can Only Point to Conventional One-Event Betting

The Office Action points to Valzny's Fig. 8 for a "betting cluster" thought to correspond to claim 1. But Fig. 8 shows that all of the bets in the cluster are for "Race 2" – the same event:



If this has any pertinence to the claim, that pertinence is neither "apparent" nor "clearly explained" as required by 37 C.F.R. § 1.104(c)(2). That omission is a procedural failure that vitiates the existence of any rejection.

3. Fourth Error: the Office Action Applies an Inapt Legal Test, and Applies Even That Test in a Factually-Erroneous Manner

The Federal Circuit has urged great caution in any reliance on inherency in the context of obviousness. "Inherency and obviousness are entirely different concepts." *In re Rinehart*, 531 F.2d 1048, 1054, 189 USPQ 143, 148 (CCPA 1976). "A retrospective view of inherency is not a substitute for some teaching or suggestion … That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown." *In re Newell*, 891 F.2d 899, 901, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989). The Office Action mixes obviousness apples and inherency oranges. This is legal error.

Second, the assertion of inherency is both irrelevant to the claim language and wrong. The Office Action asserts that "it would be inherent for the bets to be different; otherwise it would be considered doubling the original bet." But the Office Action never addresses bets covering ***different events***, as recited in claim 1. Further, the "different bets" postulated by the Examiner may be placed on *different participants in the same event* (for example, two different horses in the same race), without "doubling." Therefore no inherency—at least nothing relevant to the claims—"necessarily exists."[33]

[33] "Inherency" is defeated if any counterexample exists. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

4. Fifth Error: The Action is Silent on "Reasonable Expectation of Success"

"Reasonable expectation of success" is a required element of *prima facie* obviousness. *KSR* reaffirmed this—each of *KSR*'s "recipes" for obviousness includes "reasonable expectation of success" under one of several different names:

- "predictable results;"[34]
- "improve similar devices" in the same way as known devices[35]
- "a finite number of identified, predictable solutions," with "anticipated success;"[36]
- "the variations are predictable to one of ordinary skill in the art."[37]

The Office Action is silent on this issue. The Action is incomplete, and fails to raise any *prima facie* rejection. There is no obviousness rejection for the Board to affirm.

D. Claims 2, 4-23, 26-28, 31-33, 35-47 and 49-79

On the current procedural posture, the other claims stand or fall with claim 1.

Because consideration of claim 1 was incomplete, it is impossible to fully anticipate issues that might arise later in the appeal. Appellant does not waive any procedural rights during appeal (including those that arise under statutes not fully reflected in 37 C.F.R. Part 41) that may have accrued because of the procedural failures during examination.

---

[34] MPEP § 2143(A) and (B); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416, 82 USPQ2d 1385, 1395 (2007) ("a combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." and "a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result").

[35] MPEP § 2143(C); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417, 82 USPQ2d 1385, 1396 (2007) ("if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

[36] MPEP § 2143(E); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421, 82 USPQ2d 1385, 1397 (2007) ("When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.").

[37] MPEP § 2143(F); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417, 82 USPQ2d 1385, 1396 (2007) ("When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.").

VIII. Conclusion

All rejections, to the extent any are procedurally raised, should be reversed.

Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning this application by electronic mail.

For the entire pendency of this application please charge all fees to our deposit account 50-3938. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 04-7103.

Respectfully submitted,

CANTOR INDEX L.L.C.

Dated: June 22, 2011

By: /David E. Boundy/
Registration No. 36,461

Cantor Index L.L.C.
110 East 59th St.
New York, NY 10022
(212) 294-7848
(917) 677-8511 (FAX)

Claims Appendix to

Appeal Brief

CLAIMS

1. (Last amended 4/30/2008) A method, comprising the steps of:

at a computer processor, receiving a plurality of bets, each bet comprising:

a selection of a first number of events selected from a group of events;

a selection of a respective participant for each of the first number of events selected; and

a bet amount;

wherein at least one selected event of a first bet of the plurality of bets comprises a different event from the events selected to form a second bet of the plurality of bets;

combining the amounts of the bets of the plurality to form a betting pool; and

at a computer processor, determining an amount of a payout for winning bets of the plurality based at least in part on the amount of the bets in the betting pool.

2. The method of claim 1, further comprising the steps of:

receiving results of the group of events, the results identifying a winning participant for each event of the group of events; and

determining one or more winning bets of the plurality of bets based at least in part on the results.

4. The method of claim 2, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet of the plurality of bets includes a winning participant of a specified event.

5. The method of claim 2, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet amount is at least as high as a specified amount.

6. The method of claim 2, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the selected respective participants of the bet comprise participants having specified odds.

7. The method of claim 2, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning participant of the event of the first winning bet, the increase being based at least in part on the relative odds among the winning participants of the winning bets in the pool.

8. The method of claim 2, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning participant of the event of the first winning bet, the increase being based at least in part on the relative amount bet on the events in the pool.

9. The method of claim 7, wherein determining an amount to be paid for each winning bet is further based on the odds of the selected respective participants of each winning bet.

10. The method of claim 2, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for only the bets on the same event as the first winning bet based at least in part on the first winning bet's selected respective participants for each of the first number of events selected each had specified odds.

11. The method of claim 2 further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning participant of the event of the first winning bet, the increase

being based at least in part on selection of the first winning bets' event for a bonus, selection being known to bettors while bets are received

12. The method of claim 2, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning participant of the event of the first winning bet, the increase being based at least in part selection of the first winning bets' event for a bonus, selection occurring after bets are received

13. The method of claim 1, wherein determining an amount of a total payout based at least in part on the betting pool comprises adding to the betting pool a carryover amount from a previous betting pool.

14. The method of claim 1, further comprising the steps of:

receiving results of the group of events, the results identifying a winning participant for each event of the group of events;

determining whether there are any winning bets based at least in part on determining for each of the plurality of bets if each selected respective participant corresponds to the winning participant for each of the first number of events selected in the bet; and

determining a carryover amount to carry over to a future total payout if there are no winning bets.

15. The method of claim 1, further comprising the steps of:

canceling at least one event of the group of events;

receiving results of the group of events, the results identifying a winning participant for at least one event of the group of events; and

determining one or more winning bets by determining for each of the plurality of bets if at least one of the selected respective participants corresponds to the winning participant for at least one of the first number of events selected in the bet.

16. The method of claim 1, wherein the first number of events comprise horse racing events held at different tracks.

17. The method of claim 1, wherein the first number of events comprise events held on different days.

18. The method of claim 1, wherein the first number of events comprise two or more events selected from events from the group consisting of horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic or other sporting events.

19. The method of claim 18, wherein the first number of events comprise at least one horse racing event and at least one football event.

20. The method of claim 18, wherein the first number of events comprise at least one football event and at least one basketball event.

21. The method of claim 18, wherein the first number of events comprise:

a first event selected from events from the group consisting of a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

a second event selected from events from the group consisting of a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

wherein the first event and the second event comprise different types of events.

22. The method of claim 1, further comprising stipulating an adjustment parameter that provides a bonus to the plurality of bets upon satisfaction of the adjustment parameter.

23. (Last amended 4/30/2008) A system for managing bets, comprising:

a tangible computer storage memory and processor designed to store and operate on a plurality of bets, each bet comprising:

a selection of a first number of events selected from a group of events;

a selection of a respective participant for each of the first number of events selected; and

a bet amount;

wherein at least one selected event of a first bet of the plurality of bets comprises a different event from the selected events of a second bet of the plurality of bets;

the processor operable to:

combine bets, including at least the first and second bets to form a betting pool; and

determine an amount of a total payout based at least in part on the betting pool.

26. The system of claim 23, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet of the plurality of bets includes a winning participant of a specified event.

27. The system of claim 23, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet amount is at least as high as a specified amount.

28. The system of claim 23, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the selected respective participants of the bet comprise participants having specified odds.

31. The system of claim 23, wherein the processor is operable to determine an amount to be paid for each winning bet further based on the odds of the selected respective participants of each winning bet.

32. The system of claim 23, wherein the processor is operable to increase a payout for a first winning bet of the one or more winning bets if the first winning bet's selected respective participants for each of the first number of events selected each had specified odds.

33. The system of claim 23, wherein the processor is operable to increase a payout for a first winning bet of the one or more winning bets if at least one of the first winning bet's selected events comprises a specified event.

35. The system of claim 23, wherein a processor operable to determining an amount of a total payout based at least in part on the betting pool comprises a processor operable to add to the betting pool a carryover amount from a previous betting pool.

36. The system of claim 23, wherein the processor is further operable to:

receive results of the group of events, the results identifying a winning participant for each event of the group of events;

determine whether there are any winning bets by determining for each of the plurality of bets if each selected respective participant corresponds to the winning participant for each of the first number of events selected in the bet; and

determine a carryover amount to carry over to a future total payout if there are no winning bets.

37. The system of claim 23, wherein the processor is further operable to:

cancel at least one event of the group of events;

receive results of the group of events, the results identifying a winning participant for at least one event of the group of events; and

determine one or more winning bets by determining for each of the plurality of bets if at least one of the selected respective participants corresponds to the winning participant for at least one of the first number of events selected in the bet.

38. The system of claim 23, wherein the first number of events comprise horse racing events held at different tracks.

39. The system of claim 23, wherein the first number of events comprise events held on different days.

40. The system of claim 23, wherein the first number of events comprise one or more horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic or other sporting events.

41. The system of claim 23, wherein the first number of events comprise at least one horse racing event and at least one football event.

42. The system of claim 23, wherein the first number of events comprise at least one football event and at least one basketball event.

43. The system of claim 23, wherein the first number of events comprise:

a first event comprising a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

a second event comprising a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

wherein the first event and the second event comprise different types of events.

44. The system of claim 23, wherein the processor is operable to communicate an adjustment parameter that provides a bonus to the plurality of bets upon satisfaction of the adjustment parameter.

45. The method of claim 1, further comprising the steps of:

receiving results of the group of events, the results identifying a winning participant for each event of the group of events;

determining one or more winning bets of the plurality of bets by determining for each of the plurality of bets if each selected respective participant corresponds to the winning participant for each of the first number of events selected in the bet;

determining an amount to be paid for a winning bet of the one or more winning bets based on the number of winning bets, the amount of the total payout and the bet amount of the winning bet of the one or more winning bets.

46. The method of claim 45, further comprising paying a bonus from the amount of the total payout if the winning bet of the one or more winning bets comprises a winning participant of a specified event.

47. The method of claim 45, further comprising paying a bonus from the amount of the total payout if at least some of the selected respective participants for each of the first number of events selected of the winning bet of the one or more winning bets had specified odds.

49. The method of claim 45, wherein the first number of events comprise horse racing events held at different tracks.

50. The method of claim 45, wherein the first number of events comprise at least one football event and at least one of the following types of events: horse racing, dog racing, basketball, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic or other sporting events.

51. The method of claim 45, wherein the first number of events comprise:

a first event comprising a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

a second event comprising a horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; wherein the first event and the second event are different types of events.

52. The method of claim 45, further comprising the step of:

stipulating an adjustment parameter that provides a bonus to the plurality of bets upon satisfaction of the adjustment parameter.

53. The method of claim 1, further comprising the steps of:

receiving results of the group of events; and

determining one or more winning bets of the plurality of bets based on the results.

54. The method of claim 1, wherein the at least one selected event of the first bet comprising a different event from the at least one selected event of the second bet comprises a different type of event from the at least one selected event of the second bet.

55. The system of claim 23, wherein the at least one selected event of the first bet comprising a different event from the at least one selected event of the second bet comprises a different type of event from the at least one selected event of the second bet.

56. (Last amended 4/30/2008) A method, comprising the steps of:

at a computer processor, receiving a first bet comprising:

a first selected number of events, the first selected number of events comprising at least a first event;

a selection of a respective participant for each of the first selected number of events; and

a first bet amount;

at the computer processor, receiving a second bet comprising:

a second selected number of events, the second selected number of events comprising at least a second event different from the events in the first selected number of events;

a selection of a respective participant for each of the second selected number of events; and

a second bet amount; and

at the computer processor, determining an amount of a total payout based at least in part on an amount of a betting pool formed by combining the first bet amount and the second bet amount.

57. The method of claim 56, wherein the second event different from the first event comprises an event of a different type than the first event.

58. The method of claim 56, wherein the first selected number of events comprises a different number of events than the second selected number of events.

59. (Last amended 4/30/2008) A method, comprising the steps of:

at a computer entry device, accepting from a user a bet that selects an event and outcome of the event on which to bet; and

forwarding the bet for assembly of a plurality of bets from a plurality of users into a betting pool, each bet in the plurality including a designation of an event and an amount, the plurality of bets in the betting pool including bets on a plurality of distinct events that differ among the bets in the pool, the betting pool to be processed by a processor to determine a payout for winning bets of the plurality based the outcomes of at least two events designated by bets in the betting pool.

60. The method of claim 59, further comprising the steps of:

receiving results of the group of events, the results identifying a winning outcome for each event of the group of events; and

determining one or more winning bets of the plurality of bets based at least in part on the results.

61. The method of claim 60, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective outcomes correspond to a winning outcome for each of the first number of events selected and the bet of the plurality of bets includes a winning outcome of a specified event.

62. The method of claim 60, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective outcomes correspond to a winning outcome for each of the first number of events selected and the bet amount is at least as high as a specified amount.

63. The method of claim 60, wherein:

a rule for determining a payout to a winning bet is based at least in part on whether at least some of the selected respective outcomes correspond to a winning outcome for each of the first number of events selected and the selected respective outcomes of the bet comprise outcomes having specified odds.

64. The method of claim 60, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning outcome of the event of the first winning bet, the increase being based at least in part on the relative odds among the winning outcomes of the winning bets in the pool.

65. The method of claim 60, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning outcome of the event of the first winning bet, the increase being based at least in part on the relative amount bet on the events in the pool.

66. The method of claim 60, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for only the bets on the same event as the first winning bet based at least in

part on the first winning bet's selected respective outcomes for each of the first number of events selected each had specified odds.

67. The method of claim 60, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning outcome of the event of the first winning bet, the increase being based at least in part on selection of the first winning bets' event for a bonus, selection being known to bettors while bets are received

68. The method of claim 60, further comprising the step of:

increasing a payout for a first winning bet of the one or more winning bets relative to a pari-mutuel payout for the winning outcome of the event of the first winning bet, the increase being based at least in part selection of the first winning bets' event for a bonus, selection occurring after bets are received.

69. The method of claim 60, wherein determining an amount to be paid for each winning bet is further based on the odds of the selected respective outcomes of each winning bet.

70. The method of claim 59, wherein determining an amount of a total payout based at least in part on the betting pool comprises adding to the betting pool a carryover amount from a previous betting pool.

71. The method of claim 59, further comprising the steps of:

receiving results of the group of events, the results identifying a winning outcome for each event of the group of events;

determining whether there are any winning bets based at least in part on determining for each of the plurality of bets if each selected respective outcome corresponds to the winning outcome for each of the first number of events selected in the bet; and

determining a carryover amount to carry over to a future total payout if there are no winning bets.

72. The method of claim 59, further comprising the steps of:

canceling at least one event of the group of events;

receiving results of the group of events, the results identifying a winning outcome for at least one event of the group of events; and

determining one or more winning bets by determining for each of the plurality of bets if at least one of the selected respective outcomes corresponds to the winning outcome for at least one of the first number of events selected in the bet.

73. The method of claim 59, wherein the first number of events comprise horse racing events held at different tracks.

74. The method of claim 59, wherein the first number of events comprise events held on different days.

75. The method of claim 59, wherein the events underlying bets in the pool comprise two or more event types selected from events from the group of types consisting of horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic or other sporting events.

76. The method of claim 75, wherein the events underlying bets in the pool comprise at least one horse racing event and at least one football event.

77. The method of claim 75, wherein the events underlying bets in the pool comprise at least one football event and at least one basketball event.

78. The method of claim 75, wherein events underlying bets in the pool comprise:

a first event selected from events from the group consisting of horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

a second event selected from events from the group consisting of horse racing, dog racing, basketball, football, baseball, hockey, soccer, jai-alai, golf, boxing, rugby, cricket, auto racing, bicycle racing, tennis, Olympic, political or entertainment event; and

wherein the first event and the second event comprise different types of events.

79. The method of claim 59, further comprising stipulating an adjustment parameter that provides a bonus to the plurality of bets upon satisfaction of the adjustment parameter.

Evidence Appendix to

Appeal Brief

NONE

Related Proceedings Appendix to

Appeal Brief

NONE